



MINUTES OF THE LAND RECLAMATION COMMISSION MEETING

May 26, 2005

Chairman Jim DiPardo called the meeting to order at 10:00 a.m. at the Missouri Department of Natural Resources, 1738 East Elm Street, Jefferson City, Missouri.

Commissioners Present: Jim DiPardo; Mimi Garstang; Bob Ziehmer; Kevin Mohammadi; Nick Matherly; and Dr. Gregory Haddock.

Staff Present: Larry Coen; Tom Cabanas; Richard Hall; Mike Larsen; Larry Hopkins; Andy Reed; Mike Mueller; Bill Zeaman; Teri Bibbs; and Shirley Grantham.

Others Present: Rich AuBuchon, Attorney General's Office; Stephen Preston and Perry Pursell, Office of Surface Mining; Jim Rolls and Mike Giovanini, Associated Electric Coop., Inc.; Omer Roberts, EAO, MDNR; Louise Delameter; Tom Delameter; Steve Rudloff, Missouri Limestone Producers Association; Neal Clark and Susan Clark, Colonial Limestone; and Amy Cook, Gredell Engineering.

1. MINUTES OF THE MARCH 24, 2005, MEETING

Dr. Haddock made the motion to approve the Minutes as written. Mr. Ziehmer seconded; motion carried unanimously.

2. ABANDONED MINE LAND ACTIVITIES

AML Status Report (Attachment 1). Mr. Cabanas stated the Perche Creek Project is now complete. The original debt amount was \$545,000.00. With the change orders to date, the total cost of the project is \$735,661.00. Work at the Miller's Creek Project includes rock waterways, terraces, liming, seeding, and mulching. The contractor has received about 90 percent of the contract price. An additional pay estimate was done this week which brings the payment up to about 98 percent. Final payment will probably occur in the next few weeks, once all of the paperwork is completed. The original contract price was \$487,011.00, and with a few deductions, the final amount will probably be under that amount.

Mr. Cabanas stated with regard to Non-Coal Shaft Closures, the staff recently completed work at several very large shaft openings near Stotts City, which is a small town between Springfield and Joplin. Initially, a contract was bid out to fill the openings with rock, but the attempt failed after the largest hole swallowed up the amount of rock specified in the

contract, which was about 1,400 tons of rock or about \$13,100.00. Mr. Cabanas stated that since that did not work, the staff then bid a second project which included the construction of some concrete pyramids reinforced with rebar. These were dropped into the holes and then used some associated rock from the mine area and crushed rock to fill the holes. That project is now nearly complete. The total on the last project was \$19,300.00. This week, several more holes opened up due to the rain near a residence. These will be filled in as soon as approval is received from the Office of Surface Mining.

Mr. Cabanas stated in the area of Bond Forfeiture, the staff is currently surveying and planning work at Missouri Mining's Pit 3 and Pit 12 in Putnam County. Maintenance work is being planned for the North American Resources, Silver Creek, Burbridge Coal, and Universal Coal & Energy Pit 7 mines as well.

Mr. Cabanas stated regarding Surety Reclamation projects, the reclamation work at the Midwest Coal, Tiger Mine, is nearly complete; and all of the topsoil replacement and seeding have been completed. The Surety has indicated an intention to submit a Phase I liability release request on this area soon. A recent inspection of the area indicates that the project has proceeded at or above expectations.

Mr. Coen introduced a new Commissioner, Mr. Nick Matherly.

3. PERMIT ISSUES

Hearing Request - Colonial Limestone, Inc., Permit Expansion (Attachment 2). Mr. Zeaman stated that on February 1, 2005, the Program received a permit application from Colonial Limestone proposing to mine limestone on 160 acres in Mercer County. This application, although advertised as "new" in the newspaper, is actually a time frame renewal application that will allow Colonial to continue mining on 120 acres until the year 2030 on their current long-term mine plan boundary. Colonial will also have the ability to expand on an additional 40 acres outside their current long-term mine plan boundary until the year 2030 if the application receives approval. The company published the public notice once a week for four consecutive weeks in the *Princeton Post-Telegraph*. The company also sent by certified mail a notice of intent to operate a surface mine to adjacent landowners and to the Mercer County Circuit Clerk, which was later forwarded to the Presiding County Commissioner of Mercer County. During the public comment period following the initial publication of the public notice, the Program received two letters signed by six people concerning the proposed permit application. One letter requested that a hearing be held and indicated concerns about this mining operation. The County Commissioners further suggest that area landowners believe that their quality of life will be affected, and the area landowners do not want the permit issued or the proposed expansion to take place.

Mr. Zeaman stated The Land Reclamation Act addresses the issues of conducting a mining operation within a distance to the property line, year-to-date time frames of a proposed mining operation, affecting people's quality of life, a request for a hearing, and permit denial. The Department of Natural Resources' Air Pollution Control Program regulates dust emissions migrating onto adjacent lands. The Department does not regulate the detonation of explosives or the adverse results of those detonations. The Land Reclamation Act requires that the Staff Director make a formal recommendation regarding the issuance or denial of an applicant's permit. In addition, the Act requires the Staff Director to consider any written comments when making the notice of recommendation. When considering the application only, the Staff Director would be in favor of issuing the permit application involving a total of 160 acres at Site #4 sought by Colonial Limestone. However, with outstanding enforcement, including a Formal Complaint issued by this Commission, the Staff Director recommends that the Commission table the request for a hearing until Colonial Limestone brings their mining operation into compliance with the outstanding enforcement issues.

Mr. Tom Delameter, a property owner in the area, stated his intention was not to put Colonial Limestone out of business. They have been good neighbors to him so far with the boundary they have. His concern is the adjacency of the operation to him. He thought there should be some set back laws for property lines and residences. He stated his residence is about 250 yards from where the company wants to go. Another property owner in the other corner where the company is already operating has had rock come through their roof and ceiling and land on their kitchen table. That is not what we want. Mr. Delameter stated he understood about the law the Commission has to use to consider this situation, but he wanted to come before the Commission and express his concerns. Perhaps new rules can be made in the future on set backs. Other landowners in the area have complained about the blasting vibration to rocks being blown onto their property, noise, the dust, erosion--in one instance where a county road might wash out. He would like to keep the current boundary.

Dr. Haddock asked Mr. Delameter how close he lives to the company's most recently mined area?

Mr. Delameter stated he would be 1/4 to 1/2 mile from the current operation where they are permitted to mine.

Mr. Neal Clark, Colonial Limestone, stated the company first sent in the paper work in December 2004. In approximately March 2005, he stated he was informed that Mr. Delameter had complained about the company's site. He stated he has not received complaints from anyone else, either on the expansion permit or the existing permit right now. Mr. Clark stated he tries to be a good neighbor and he does not go on someone else's property or destroy it. If any destruction does occur, he stated he would take steps

to fix that property. Mr. Clark stated there has been a rock thrown through a man's house. That matter has been taken care of. The company's blasting techniques have changed. He stated he contacted Mr. Delameter in March 2005 to see if there was some way that they could reach a compromise without having to come before the Commission. Mr. Delameter did not seem interested in having any kind of compromise. However, Mr. Delameter did tell Mr. Clark that there was a possibility that the company could mine the 10 acres in the northwest portion of the area in question now. So, with that belief, he did not see a problem. Mr. Clark stated his property that adjoins the adjoining property to his house is about 250 yards. In that space, there are continuous trees and brush. Noise and dust is very limited to Mr. Delameter's house. Mr. Clark stated that when he is in the office at Princeton, the noise from the highway is greater than the noise from the existing operation now. The operation exists within the same distance or less than what Mr. Delameter's house will be from the ground itself. Mr. Clark stated he told Mr. Delameter that they could compromise on the area and make a boundary, a buffer zone. He stated the company's intention never was to mine exactly to his property line. The company did not intend to mine in that corner down where the property line exists. The company's intention was to start mining in that area, work down to that corner, away from Mr. Delameter's, because there are safety concerns with him living there. Mr. Clark stated the company needed the area for further expansion because other areas have been depleted. If he had known the depletion was going to exist, he would have sent in the paper work much sooner and have been able to go somewhere and start looking at other areas to start mining on the property which the property owner owns. However, that is not the case. He stated he did everything at the time that he thought was necessary to expand or shut the company down.

Mr. Clark stated as far as the letter from the County Commission, only one County Commissioner has ever been out to the quarry several times. So, their idea of having a massive impact on somebody's life, I don't see where they could have that much sway. The other two have never been on the property. Mr. Clark stated he felt that the letter was overstepping the bounds. If the County Commission wanted to issue such a letter, they should have at least visited the quarry.

Mr. Clark stated with regard to the Notice of Violation, he is working on that. He has already started to reclaim the area, and to completely fix that area, it is going to take more of an effort than what he thought it was going to be because drainage in that area all focuses to that point. The western portion will be basically all reclaimed within a year. Reclamation has already started on a good portion of the eastern section of the mine. As far as the county road washing away, there is no possibility that road could wash away. If that road washes away, it will be because of heavy, heavy rainfall. The ground is structurally sound, and there is a strong rock ledge underneath to support it. Other quarries have strip mines next to highways almost as close as we have to that county road.

Mr. Clark stated he has received no complaints other than the letters from Mr. Delameter and the County Commission. There have been a few complaints from neighbors saying that the blasts were a little loud and that there was a rock that landed on their property. Everybody he has talked to wants the company to be there. Surrounding counties want the company to be there. If Colonial Limestone is gone, there will be a monopoly, and it will be back to the way it was with no competition in the most economically depressed county in the State and one of the most depressed counties in the United States.

Mr. Ziehmer asked with regard to the first permit that Colonial Limestone is seeking renewal on, when does that expire?

Mr. Clark replied he thought it expired next year.

Mr. Ziehmer asked as far as the compliance issues, will those be addressed prior to that date?

Mr. Clark replied yes and that he did not see any reason why it cannot be. He stated he has already taken steps to make compliance. He stated the weather has not been good in the area. There have been massive amounts of rainfall. Mr. Clark stated there are acres and acres of drainage going into this one area. That is what is causing it.

Mr. Ziehmer asked regarding the proposed expansion area, when did Colonial start mining that area? How long has the company been mining in that area?

Mr. Clark stated he thought about a month.

Mr. Ziehmer noted that according to the information he has, it indicates that mining started before a permit was issued in the expansion area.

Mr. Ziehmer noted that Mr. Clark indicated that the company has changed the techniques or method used in blasting. Could he explain that?

Mr. Clark stated that the holes are drilled about the same as they always have been, but it is the amount of explosives the company uses in the holes. The holes are filled with explosives down to the bottom. Instead of putting in dirt just a few feet in the hole, dirt and rock are put about 5 feet inside the hole for stemming. That causes the explosion to happen in the bottom of the hole, heaving the rock up, so very little flyrock is up in the air. It doesn't go far. Where the company is currently mining, it is within less than 100 yards of an asphalt plant. No damage has occurred to anything there. There have been a few small rocks that have flown up there but have not damaged anything. With the possibility of destroying a \$2 million piece of machinery, Mr. Clark stated he felt the

company's methods are relatively safe. Mr. Clark stated he would not take the risk of shooting close to the asphalt plant that could possibly ruin the corporation if he was not for sure the explosion would not cause a detrimental affect to it.

Mr. Ziehmer asked so that the previous blast that involved an impact to a home, at the time, what was the distance between the blast site and the home?

Mr. Clark stated he thought about 100 yards.

Ms. Garstang asked when that particular blast occurred?

Mr. Clark stated he thought it was about three years ago.

Mr. DiPardo asked with regard to the paper work, Mr. Clark had indicated that it was sent to the Program in December 2004. He asked whether the company felt since it had sent in the paper work, it could go ahead and mine on the 40 acres without getting an approval?

Mr. Clark stated as far as he knew, everything was going on. He had not had any complaints. When he sent in his paper work, he had two choices to make--either continue mining or go out of business. If it is a choice of going out of business or bending a rule or two, he wants to keep his ten employees employed.

Mr. DiPardo stated he could appreciate that decision. However, there are guidelines that have to be adhered to. Sending in all of the paper work and thinking it is done, it is not. As the company should know now it should have waited until it received a permit and then gone into the area. A company can't just go mining in an unauthorized area.

Mr. Clark stated this was an area that was said to be acceptable with the complainant.

Mr. DiPardo stated that it is not in Colonial's permit.

Mr. Clark stated his permit was already sent in and that he believed that there was no reason for the permit to be denied. He stated if he had known it would take this long to get the permit, he would have sent the paper work in 2003. That's the problem. There should be a much restricted time frame.

Mr. Coen stated the Program should not be blamed for Colonial's noncompliance. The company needs to be responsible for its own noncompliance. It does not take six months to get a permit, but the law requires 45 days of public notice and requires a minimum of two weeks for staff review--this would be about two months. Most permits are issued

within that time frame. Mr. Coen stated that when the Program gets a request for a hearing, the clock stops. That is in the law. The Program cannot change that and has no control over that period of time that the request for a hearing is scheduled for a Commission meeting. In addition, in the instance of Colonial Limestone, the request for a hearing led to the discovery of mining without a permit. Most companies that send in an application and don't get any requests for a hearing get their permits as fast as the Program staff can issue them. When there is a request for a hearing and a noncompliance, it does take time.

Ms. Garstang noted that Mr. Clark had indicated that in a meeting between him and Mr. Delameter, it was indicated by the company that it would be willing to leave more of a buffer area adjacent to their property. Does the law not require a buffer of 50 feet?

Mr. Larsen stated there are no specified setbacks from a property line either in the law or the regulations, only from county roads or public roads. The Program leaves it to the company's discretion and common sense not to get so close to a property line that they cannot reclaim their highwalls. So it is left to the company to decide how close they can get to the adjoining property owner and still be able to reclaim the tops of their highwalls.

Ms. Garstang asked Mr. Clark if he had looked at or discussed any particular distance with the adjacent property owner about what specifically if the company is willing to leave a buffer there, how much?

Mr. Clark stated he did. He also asked Mr. Delameter if there would be anything that would make the property owner happy, and he said no. The northwest corner would be the most. The mine site is not visible from Mr. Delameter's house. There is continuous brush and trees.

Ms. Garstang asked whether Mr. Clark was referring to the new permit area?

Mr. Clark stated yes, it was the new permit area. The old permit is the same. The extreme western portion might be seen as it is on a higher grade. The noise from the highway is as great or greater than the noise from the mining operation.

Mr. DiPardo noted that Colonial is currently permitted for 120 acres is that correct?

Mr. Clark stated yes.

Mr. DiPardo asked if the company has already mined through that 120 acres, since the operator indicated he had nowhere else to go?

Mr. Clark stated that of the 120 acres, very little of it is mineable.

Mrs. Susan Clark stated that Colonial Limestone has been in business for 31 years. During that time, the rock through the house is the only known accident the company has ever had. She stated she was not aware that Mr. Delameter had built a house that close to the quarry until the issue of the request for a hearing.

Mr. Delameter noted that Mr. Clark had made a reference to the letter from the County Commission. He felt they were responding to the letter sent by the Program, as he did not send anything to them. As far as the boundary setback, he stated he met with Mr. Clark and his mother. They asked him what he was willing to do? He stated he asked Mr. Clark to draw a line on a map and then he would discuss it. Mr. Delameter stated he told them that he would not have a problem with the northwest corner of the 40 acres. That was the last discussion on the issue. Mr. Delameter stated that if Mr. Clark wants to leave a boundary, make the permit say that.

Mr. Zeaman stated he would like to make one clarification. He stated he did believe that Mr. Clark started on his application in December 2004 and that is evident by a consent to entry form signed by a Mr. Yowell. However, the Program did receive the application on February 1, 2005, as stamped received by the Land Reclamation Program.

Mr. Coen stated he found it very difficult to make a recommendation to the Commission regarding this permit expansion request. The application is complete now, and, as such, the permit is fine to be issued. He stated that when he recommends to the Commission that they issue a permit, then the Commission has an Order against the company, and there are outstanding Notices of Violation, it puts him in an awkward position because it would then appear to the public that he is ignoring the law. Mr. Coen stated he has not given the Commission much of a recommendation and that he has done that on purpose. The Commission is then free to make its own determination. Mr. Coen stated that, yes, the permit is acceptable and can be issued; but there are outstanding issues that are very serious and need to be considered.

Mr. Mohammadi asked Mr. Clark to explain regarding the receipt of the permit paper work.

Mr. Coen asked whether the paper work received in December 2004 was before the public notice?

Mr. Reed stated what occurred in December 2004 was the operator was found to be outside of his permitted boundary on an area in their long-term mine plan. In order to get the company back into compliance with that area that was affected outside of their

permitted area, Mr. Reed stated he requested Colonial Limestone to submit an expansion application for that site, and at that time, Mr. Clark had expressed a desire that he wanted to expand a larger mine plan boundary. In December 2004, the Program received an application that included both the small amendment area within the long-term mine plan boundary and the expansion area outside of the long-term mine plan boundary. Mr. Reed stated that at that point, if the Program had accepted that application in December 2004, it would have opened up the entire area and it would not have allowed the company to come back into compliance with the area already affected, a small 5-acre area. So Mr. Reed stated he requested that the company do the amendment first and then the expansion. The expansion was officially received, the area that is under contention now, in February 2005. It was a request to not accept the application that was submitted in December 2004, simply to get the company back into compliance. There was a 5-acre area that was affected, which is also the area under Notice of Violation for off-site sediment. What the Program wanted to do was to get that area permitted and back into compliance for the affected ground and then deal with the expansion application separately.

Mr. Coen stated that what Mr. Reed is describing is that the administrative issue that if the application is wrapped all into one package the way it was submitted the first time, the staff would not have been able to act on it until after a public notice, after the hearing request, even though part of the application had to do with currently permitted ground. So, as indicated by Mr. Clark, he did send in his first application in December 2004; but it was not issued at that time.

Ms. Garstang stated that in light of the fact that the question in front of the Commission today is for a request for a hearing, and any time the Commission moves forward with a hearing request, it takes a lot of time and effort on everyone's part, it seems it might be appropriate that the Commission table the hearing request and see if Mr. Clark wants to revise his permit in any way and by the next time the Commission meets, he may have resolved his Notices of Violation and then the Commission could discuss the request for a hearing again at that time and see what progress Mr. Clark makes with his site and the Formal Complaint and the Notices of Violation.

Ms. Garstang made the motion that the Commission table the request for a hearing today regarding Colonial Limestone and again take it up at the next regularly scheduled Commission meeting which would be held in July 2005. Dr. Haddock seconded; motion carried unanimously.

Mr. Mohammadi noted that between today and the July meeting Mr. Clark needs to work on resolving the noncompliance issues.

Mr. AuBuchon stated he felt the Commission should seriously consider taking some action against Colonial Limestone for mining without a permit. This is something, as an industry, should not be allowed to happen, especially when the operator admits to operating without a permit. The Commission would be well received to proceed in the future to let the Attorney General handle this matter.

Mr. Coen asked if Mr. AuBuchon was referring to something different than the Notices of Violation that had been issued to the company?

Mr. AuBuchon stated that as he reads the statute, if the Commission knows that an operator is mining without a permit, the Commission should receive the matter and take it to the Attorney General for litigation. It is up to the Program to proceed with the Notices of Violation. But, at this point and time, there has already been testimony from the operator admitting that he is operating without a permit; and that may nullify the Notice of Violation process.

Mr. Ziehmer made the motion the Commission go into Closed Session to discuss the issue raised by Mr. AuBuchon. Dr. Haddock seconded; motion carried unanimously.

The Commission went into Closed Session at approximately 11:00 a.m. and returned at approximately 11:45 a.m.

After discussion on the above issue in Closed Session, the Commission felt they needed clarification on several issues.

Mr. DiPardo asked Mr. Clark, on the 40 acres of expansion area that Colonial Limestone was mining on 10 acres of it, is the company currently actively mining there now?

Mr. Clark replied yes.

Mr. DiPardo asked when the Program staff person last conducted an inspection of the site?

Mr. Reed stated the last time staff were at the site was May 6, 2005.

Mr. DiPardo asked the operator, of the 40 acres, how much has he currently mined through?

Mr. Clark stated 2 acres at the most.

Mr. DiPardo asked if the operator was doing any shooting in that area now and is he actively removing top overburden or is he actively taking rock out of the ground?

Mr. Clark replied that he has taken some rock out of the ground.

Mr. DiPardo asked regarding the other 120 acres, the operator has nowhere else to go? Does he have any stockpiles?

Mr. Clark replied he had a very limited area.

Mr. Matherly asked regarding Mr. Clark's earlier statement regarding bending the rules a little, what did Mr. Clark mean by that? Could Mr. Clark explain his comment?

Mr. Clark stated his point was that if he was in the area before the permit was actually granted, he saw no reason why he could not mine in that area and if it means amending the permit further, he did not see a reason why he would not be granted a permit.

Mr. Matherly asked Mr. Clark what he tells the inspector when he comes and sees what you are doing and he has a map and he knows that you are not in the area that you should be, what do you tell him when he asks about it?

Mr. Clark replied that he told the inspector he was mining the area. Mr. Clark stated he was led to believe by the inspector that it was just a matter of completing the paper work and submitting it to the Program.

Mr. Matherly asked if Mr. Clark could not mine there and still be business?

Mr. Clark replied for a very limited period of time.

Mr. Matherly asked Mr. Clark if he would be willing to meet with Mr. Delameter and establish a line where it would be agreeable to everyone?

Mr. Clark replied yes.

Mr. Matherly stated that in the operator's long-term mine plan, he could agree to something that would be workable for both the operator and Mr. Delameter?

Mr. Clark stated he was a neighbor and had no reason to make anyone mad.

Mr. Delameter stated all he has to go by is what the permit asks for. It asked for all 40 acres, and he is not willing to give all 40 acres.

Mr. DiPardo asked Mr. Delameter what he would be willing to give?

Mr. Delameter had stated to Mr. Clark earlier that he would give the 10 acres on the northwest corner, which is where the company is right now. That was his first offer, and it is over the hill from Mr. Delameter's property. It helps to keep the noise at the mine site.

Mr. DiPardo asked Mr. Clark if that was something he could live with?

Mr. Clark stated he could live with it right now.

Mr. DiPardo asked the operator what is right now, then change his mind?

Mr. Clark replied he would like to have more area, more than 20 acres.

Mr. Mohammadi noted Mr. Clark had stated he would be going out of business if he had not started mining on the 10 acres of the 40 acres. If he had waited to get his permit, he could have gone back into business?

Mr. Clark replied no. He had deadlines.

Mr. Mohammadi asked deadlines for what?

Mr. Clark replied deadlines for material in May. He had to supply materials for State projects, etc., and he has to bid these jobs so he can maintain business and keep his workers working. Mr. Clark stated if he did not bid these jobs and get these jobs done or started, the penalties would have eaten him up and the company.

Mr. Mohammadi asked Mr. Clark that when he makes a contract, there is no clause in there that in case of emergency you can't provide the material?

Mr. Clark stated the State does not look at things like that.

Mr. Mohammadi asked Mr. Clark whether he was aware of any laws or regulations that have provisions in them that he could violate the law because of economic reasons?

Mr. Clark replied no.

Mr. Mohammadi asked then, in Mr. Clark's opinion, is it alright to violate the law because of economic or business decisions?

Mr. Clark stated that the matter of law, which, in his opinion was on his side, he would say yes. He stated he has to look at the lives of 11 different people, 11 different families.

Mr. Delameter stated in looking over the map, he would be satisfied to allow Colonial Limestone to permit the north half of the 40 acres, providing that is all. He does not want it to where the company runs out of rock and comes down further again.

Mr. DiPardo asked Mr. Clark if he does core sampling at the site or just dig and scratch?

Mr. Clark replied there have been core samples in the area, but he has never taken any himself. He did scratch here and there where the rock sticks up out of the ground to see where the material was.

Mr. DiPardo asked the operator whether he was mining south facing slopes or does he have to remove a lot of overburden to start something like this?

Mr. Clark stated some areas don't require removal of much material, other areas do.

Mr. Matherly asked Mr. Clark if he and the landowner agree on the boundary, and then he gets into another bind like he is now to provide material by a deadline, would the operator do the same thing again?

Mr. Clark stated he has been put in a position he did not want--no. He stated he wants to be in the position where he can have material so that he can permit areas that are agreeable to him and his neighbors. Mr. Clark stated when he gets this, he will be able to know further into the future, say a year or so, where he can get permits in other areas. He stated he is in this position because of the geological problem that arose in the western 40 acres. He stated he took over the operation upon the death of his father.

Mrs. Clark stated her late husband was the one who decided on the last 40 acres, and she felt that he did not know the rock was going to end.

Mr. Mohammadi asked if Mr. Clark had ever chased one of the Commission's inspectors off his property?

Mr. Clark replied no. He stated that he did contact their inspector's boss, Mr. Tom Cabanas, and that the inspector was not to come around again. Mr. Clark indicated that the inspector had spread rumors and stories about the company's prior operations to other persons in the business.

Mrs. Clark stated she and her husband had met with the inspector's supervisor and had been promised that he would not be back to inspect. However, he did come back shortly after her husband's death. It had been agreed that Colonial Limestone would have a different inspector.

Mr. DiPardo asked Mr. Cabanas if he had any comments regarding the situation with the inspector.

Mr. Cabanas replied he had no comment.

Mr. DiPardo asked Mr. Larsen if he knew anything about the situation regarding the inspector.

Mr. Larsen stated that when the inspector had visited Colonial Limestone, the situation was not good; and after discussion with the Program, it was decided that it would be to everyone's best interest for another inspector to be assigned to the company.

Dr. Haddock stated that regarding the operation of mining off of permitted land on the 40 acres, he did not see a choice but for this Commission to refer that specific case to the Attorney General's Office. He therefore made the motion that the Commission formally ask the Attorney General's Office to look into that situation. Mr. Mohammadi seconded; the motion carried unanimously.

Mr. DiPardo asked whether the issue of the hearing request needed to be brought up again or since the operator and the landowner are willing to agree on changing the boundaries, or let the original motion stand?

Dr. Haddock asked whether it would be in the right of the parties that requested the hearing to withdraw their claim for a hearing if a plan was submitted by the operator that was appropriate? Perhaps the Commission could decide something prior to the July meeting. Or could the original motion be rescinded?

Mr. Coen stated it could be rescinded; however, the Commission has made a motion that cannot be rescinded. The staff could not rescind the motion; only the Commission could rescind the motion to table this matter until July. Even if the operator and the landowner work out the issue of 20 acres versus 40 acres and even if Mr. Delameter withdraws his hearing request, the Program staff are still obligated to come back before the Commission in July 2005 before the staff takes any further action. The Commission would have to deal with the original motion in order to get that out of the way.

Mr. Mohammadi stated there is still the issue of the outstanding Notices of Violation that have not been resolved yet that Mr. Clark had committed to bring the site into compliance and to remember what the timetable is for that and also the claim on civil penalty for \$1,000.00.

Dr. Haddock asked if the hearing request is something that the Commission could amend to not say in July 2005 but change it to be in a matter of weeks?

Mr. AuBuchon stated the Commission could conduct an open special session if they wanted to as long as the meeting was announced.

Ms. Garstang asked if it would be a disadvantage for the operator and Mr. Delameter to wait until the July meeting or whether it would be their preference to resolve the matter sooner?

Mr. Clark stated sooner would be better for him.

Mr. Delameter stated that as far as he was concerned, as soon as he sees the permit request for the north half of that 40 acres, he would be satisfied with it. Mr. Delameter stated it would have to be in writing before the issue goes any further.

Dr. Haddock stated he felt it is still in the best protection of their interests to not deny the hearing request, but just continue to table it. Then, it could be dealt with in a matter of a few weeks in an open session if everything is taken care of and it is rescinded.

Mr. Delameter stated he does not want to put Colonial Limestone out of business. The sooner the operator can keep going, fine. But he felt that things should be in place before the operator moves on.

Ms. Garstang made the motion that the request for a hearing on Colonial Limestone be tabled until on or before July 28, 2005, pending resolution of a final mining plan with an agreement that the Commission would be glad to hold a special meeting prior to the next scheduled meeting on July 28 to address the issue. Mr. Matherly seconded; motion carried unanimously.

4. ENFORCEMENT

In Re: Alternate Fuels, Inc., Transfer Case (Attachment 3). Mr. AuBuchon stated before the Commission is a Recommended Order from the Administrative Hearing Commission (AHC) which had been assigned the role as Hearing Officer in regard to this case regarding Alternate Fuels, request for a permit revision. This case was brought before the AHC in regard to a permit transfer from Alternate Fuels to Michael Christie. Alternate Fuels filed an appeal in this particular matter to the Land Reclamation Commission and which was referred to the AHC. We have already gone to the final recommendation phase from the AHC. However, in the interim, what has happened is that the Commission revoked the permits for Alternate Fuels. Now, if there is nothing to transfer because the permits were revoked, then there is no point for the transfer case. If those permits are still in place, then there is still a transfer case. What we have here is a case ready to come before the Commission or a recommended decision from the AHC

and also an appeal by Alternate Fuels to the appellate courts of Missouri regarding the Commission's role in revoking the permits and revoking the bonds. Mr. AuBuchon stated the best thing for the Commission is to follow this Recommended Order which has come from the AHC to stay or allow to be held over by the AHC without taking action on the disposition of the case until such time as the Show Cause proceeding regarding the revocation of the permits is decided by the Appeals Court. He recommended the Land Reclamation Commission should sign and approve of the Recommended Order allowing the AHC to stay final disposition of the appeal which is currently before it until such time as the Appellate Court's decisions regarding the Show Cause proceeding is finalized.

Dr. Haddock made the motion the Commission follow the recommendation to sign the Recommended Order and approve it. Ms. Garstang seconded; motion carried unanimously.

5. BOND RELEASES

Industrial Minerals:

Beaver Creek Aggregates, Bond Release Request for 12 Acres (Attachment 4). Mr. Reed stated this release request is for 12 acres in Taney County for a total bond release of \$10,000.00. It is a liability and bond release. The release request is being brought before the Commission because the landowner has some minor concerns about releasing this site. The landowner was sent a certified letter requesting that she send in her comments regarding the release. However, no comments have been received regarding this bond release request. As the vegetation on the site was starting to sprout, the landowner was running about 40 horses on the site. That is the reason why the staff is recommending release of the site because it is being overgrazed at this time. Under normal circumstances, the staff would not recommend release of a site such as this one. However, it is felt that, if the operator were to do any more seeding on the site, it would again continue to be overgrazed. Staff has performed an inspection of the release request area and determined that the operator has completed reclamation efforts necessary to achieve release of bond and liability at this site. It is therefore the recommendation of the staff that the Land Reclamation Commission approve this application as presented for the release of liability and the applicable bond amount.

Dr. Haddock made the motion to follow the staff's recommendation of releasing the bond for Beaver Creek Aggregates for 12 acres. Mr. Ziehmer seconded; motion carried unanimously.

Summary of Bonds Released by Staff Director. Due to time constraints, it was decided to postpone this presentation until the July meeting.

Coal:

Mr. Hall noted the Office of Surface Mining (OSM) processed the bond release requests for Associated Electric Cooperative on behalf of the State of Missouri and recommends approval of these bond release requests.

Associated Electric Coop., Inc. (Attachment 5)

Prairie Hill Mine, Permit 1985-10, PP-05-02: This release request is for Phase I and II release on 10.8 acres in the amount of \$21,600.00, Phase II release on 99.2 acres (no dollar amount), and Complete/Undisturbed release on 27.8 acres in the amount of \$69,500.00 for a release amount of \$91,100.00. There is wildlife habitat, industrial, pasture, nonprime cropland, and upland prime farmland involved in this release request.

NEMO Mine, Permit 1983-17, PP-04-04: This release request is for Phase I, II and III release on 28.5 acres; Phase III release on 0.5 acre; and Complete/Undisturbed release on 4.0 acres for a total release amount of \$81,500.00. Land uses are wildlife habitat, pasture, water, and woodland.

NEMO Mine, Permit 1982-26, PP-04-03: This release request is for Phase I, II and III release on 40.0 acres; Phase II and III release on 47.50 acres; and Complete/Undisturbed release on 3.0 acres for a total release amount of \$131,250.00. Land uses are wildlife habitat, pasture, industrial, and water.

Prairie Hill Mine, Permit 1986-01, PP-05-01: This release request is for Phase I and II release on 57.10 acres; Phase II release on 841.29 acres; and Complete/Undisturbed release on .70 acre for a total release amount of \$10,000.00. The release request does not have any Phase III release. Phase III release is the final release of all liability to the company. Land uses are wildlife habitat, pasture, water, industrial land use reclaimed to a road system, nonprime cropland, and prime farmland.

Dr. Haddock made the motion that the Commission follow the recommendation of the Office of Surface Mining and allow the bonds to be released for Associated Electric for bond release applications PP-05-02, PP-04-04, PP-04-03, and PP-05-01. Ms. Garstang seconded; motion carried unanimously.

Coal Bond Forfeiture Liability Release:

Missouri Mining, Pit 8A, BF-05-004, (Attachment 6). Mr. Hall stated Missouri Mining's permits were revoked on September 22, 1997, by the Commission. This area known as the Pit 8A area was used by the company for its offices and coal preparation

facilities. Mr. Hall stated this particular release is for 75 acres of the Pit 8A area. The initial forfeiture reclamation was completed in 2003, followed by several periods of maintenance. Inspections by the staff revealed that the area has been reclaimed in accordance with the forfeiture reclamation plan, not necessarily in accordance with the mining plan. The area is located in Putnam County. Since this area was a forfeited mine site and was, in many cases, affected prior to permanent program law, there are less soil resources available and there isn't quite the vegetative quality that would be seen at active mines. The staff does feel the area is in stable condition and meets the post mining use needs.

North American Resources, Silver Creek Mine, Permit 1993-01, SU-05-005, (Attachment 7). Mr. Hall stated this mine site was reclaimed by the surety, New York Frontier Insurance Company, after the permit was revoked and the bond forfeited. The surety company ultimately failed in business and was taken over by the Superintendent of Insurance of the State of New York who reorganized the company as Frontier Insurance Company in Rehabilitation (FIR). Under this name, the company continued to reclaim the site. This particular mine site was divided into geographic areas. The Commission at the November 2004 meeting released the southern geographic area. This area for release is the next geographic area north of what was released last November. It is located in Randolph County, north of Columbia. The area has been graded and topsoiled and revegetated.

Mr. Hall stated the above two areas were advertised for proposed release in a local newspaper serving the respective vicinities, and adjacent landowners received notices of proposed release. No comments or objections were received on either site. Therefore, it is the staff's recommendation that the Commission release the State of Missouri from further reclamation liability on the above two areas of forfeited reclamation.

Dr. Haddock made the motion that the Commission follow the staff's recommendation to release the final forfeiture reclamation liability for Missouri Mining, Forfeiture Site Liability Release No. BF-05-04, and for North American Resources, Silver Creek Mine, Forfeiture Site Liability Release No. SU-05-005. Mr. Ziehmer seconded; motion carried unanimously.

Burbridge Coal, Inc., Request for Release of Reclamation Liability, BF-05-006 (Attachment 8). Mr. Cabanas stated the company's mine site is located in Ralls and Monroe Counties west of Perry, Missouri. All permits issued to Burbridge Coal were revoked on June 27, 1991, after the company went out of business due to the death of the operator. The permits involved in this request are 1982-11, 1984-9, 1984-18, and 1986-5 consisting of 287 acres. Land uses include 8.7 acres of water and 278.3 acres of pasture. All but 2 acres, which are located on Permit 1986-05, have been given either a Phase I

and/or Phase II release in the past. Mr. Cabanas stated reclamation was completed prior to permit revocation, and now only a few areas remain to be addressed. Since most of the Phase I and II releases were previously approved, the grading, topsoil replacement, vegetation, and water quality concerns have already been approved by the Commission on these areas. The landowners have no problem accepting the land in its present condition. There are still some maintenance problems in several areas not included in the request. It is the staff's recommendation that the Commission release all of the remaining liability on the acreage as per Attachment 8.

Dr. Haddock made the motion that the Commission follow the staff's recommendation to release the liability on the 287 acres as presented for Burbidge Coal, Inc. Mr. Ziehmer seconded; motion carried unanimously.

6. OTHER

Legislative Update: Mr. Coen stated this update could be presented at the July 28, 2005, Commission meeting.

Comments From the Public

No comments were presented.

Closed Session. Dr. Haddock made the motion that the Land Reclamation Commission meet in Closed Session at 8:30 a.m. on July 28, 2005, for the purpose of discussing personnel actions and legal actions, causes of actions, or litigation as provided for in Section 610.021, RSMo. Mr. Mohammadi seconded; motion carried unanimously.

Adjournment. The meeting was adjourned at 12:55 p.m.

Respectfully submitted,

Chairman